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**TO:**
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**MAIL STOP PETITION**
**ART UNIT 3625**
**EXAMINER YOGESH C. GARG**

Andrew T. Spence
Reg. No. 45,699

In re: Jones et al.
Appl. No. 09/141,264
Filed August 27, 1998
Title: GOAL ORIENTED TRAVEL PLANNING SYSTEM

Confirmation No. 9665
Examiner: Yogesh C. Garg

Please process the attached **PETITION TO WITHDRAW HOLDING OF ABANDONMENT** (3 pages), with **EXHIBIT 1** (copy of Decision on Appeal, 15 pages) and **EXHIBIT 2** (copy of Submission of Terminal Disclaimer, Terminal Disclaimer and USPTO Auto-Reply Facsimile Transmission Sheet, 4 pages) and please fax confirmation to Andrew T. Spence at 704-444-1111. Thank you.

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CLT01/4544166v1

Attorney's Docket No. 043474/257028

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

| | | | |
|---|---|---|---|
| In re: | Jones et al. | Confirmation No. | 9665 |
| Appl. No.: | 09/141,264 | Group Art Unit: | 3625 |
| Filed: | August 27, 1998 | Examiner: | Yogesh C. Garg |
| For: | GOAL ORIENTED TRAVEL PLANNING SYSTEM | | |

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. 1.181 TO WITHDRAW HOLDING OF ABANDONMENT IN ACCORDANCE WITH MPEP §711.03(C)**

Sir:

As set forth in MPEP § 711.03(c), Applicants hereby petition to have the holding of abandonment of the above-identified application withdrawn. The application was held to be abandoned for there being no allowed claims following a decision by the Board of Patent Appeals and Interferences. Applicants submit that the holding is in error as discussed below. The following materials are submitted in support of Applicants' petition:

1. A copy of the Decision on Appeal issued by the Board of Patent Appeals and Interferences on October 19, 2005, reversing the examiner's § 103 rejection of independent Claim 58; and

2. A copy of the terminal disclaimer filed on February 10, 2006, in response to a provisional obviousness-type double patenting rejection.

As mentioned above, the application was held to be abandoned for there being no allowed claims following a decision by the Board of Patent Appeals and Interferences. Applicants would like to point out, however, that, although the decision by the Board states that the examiner's rejections are "AFFIRMED", the decision actually reversed the examiner's rejection of independent Claim 58. *See, e.g.*, the Board's Decision on Appeal, pages 12-14. As such, Applicants should not have been required to file a reply and the examiner should have issued the application with Claim 58. MPEP § 1214.06 (II).

When the Notice of Abandonment was received on February 16, 2006, Applicants immediately attempted to contact the examiner. Voicemails were left with the examiner on February 16th and on March 2nd. During a telephone conference with the examiner on March 6th,

the examiner indicated that Applicants should file a petition to revive under 37 C.F.R. 1.137(b) with a copy of the terminal disclaimer filed in response to the provisional obviousness-type double patenting rejection. However, as described above, the Examiner should not have held the application abandoned in the first place, since the Board Decision reversed the rejection of independent Claim 58. Thus, Applicants should not be required to file a petition to revive under 37 C.F.R. 1.137.

Furthermore, with respect to the provisional double patenting rejection, the above-identified application should have been permitted to issue without the filing of a terminal disclaimer. Specifically, since the above-identified application should have issued before the issuance of the later-filed application no. 10/141,935, the provisional rejection should have been withdrawn in the above-identified application. MPEP § 804 (I)(B)(1). Notwithstanding this fact, Applicants filed a terminal disclaimer, in response to the provisional double patenting rejection, on February 10, 2006.

In view of the foregoing remarks and the enclosed evidence, Applicants respectfully request that the instant petition be granted and that the holding of abandonment of the application be withdrawn.

It is believed that the present petition is treated as a petition under 37 C.F.R. 1.181, and that no fee is applicable. However, if any fee is due, please charge the fee to our deposit account No. 16-0605.

In this regard, if it is decided that Applicants are required to submit a petition to revive under C.F.R. 1.137(b), please charge the appropriate fee to our deposit account No. 16-0605. If such is the case, Applicants submit that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Respectfully submitted,

Andrew T. Spence
Registration No. 45,699

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In re: Jones et al.
Appl . No.: 09/141,264
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Page 3

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Sarah B Simmons March 16, 2006
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# EXHIBIT 1

# UNITED STATES PATENT AND TRADEMARK OFFICE

## BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



**Ex parte** TERRELL B. JONES and JOSEPH R. OFFUTT JR.

Appeal No. 2005-1663
Application No. 09/141,264

Heard: October 19, 2005

Before RUGGIERO, DIXON, and GROSS, **Administrative Patent Judges.**
DIXON, **Administrative Patent Judge.**

## DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-58, which are all of the claims pending in this application.

We AFFIRM.

## BACKGROUND

Appellants' invention relates to a goal oriented travel planning system. An understanding of the invention can be derived from a reading of exemplary claims 1, 39, and 58, which are reproduced below.

1. A data processing system for processing travel requests using a travel database, comprising:

a memory including program instructions; and

a processor operating responsive to the program instructions to:

receive a travel goal specifying a destination location and an appointment time for arrival at the destination location;

access the travel database to locate travel information corresponding to the destination location and the appointment time; determine an arrival time at an intermediate point within a vicinity of the destination location using the located travel information that allows time for traveling between the intermediate point and the destination location to ensure arrival at the destination location by the appointment time; and

determine at least one mode of transportation between the intermediate point and the destination location based upon the travel goal.

39. A method for processing travel requests using a travel database comprising the steps of:

receiving a travel goal specifying a destination location and an appointment time for arrival at the destination location;

accessing the travel database to locate travel information corresponding to the destination location and the appointment time; and

determining an arrival time at an intermediate point within a vicinity of the destination location using the located travel information that allows time for traveling between the intermediate point and the destination location to ensure arrival at the destination location by the appointment time; and

determining at least one mode of transportation between the intermediate point and the destination location based upon the travel goal.

58. A method for processing travel requests including the steps of:

receiving a travel goal including a destination location and an appointment time;

recommending a plurality of travel options and recommending a plurality of secondary modes of transportation based on the travel goal to ensure arrival at the destination location by the appointment time;

invoking a transportation decision system to select one of the plurality of travel options and one of the secondary modes of ground transportation based on the recommended travel options and the recommended secondary ground transportation;

determining whether an overnight stay is required;

invoking a hotel decision support system to select a hotel when it is determined that an overnight stay is required; and

invoking an activity and restaurant decision support system to select activities and restaurants in a vicinity of the destination location.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

| | | |
|---|---|---|
| DeLorme et al. (DeLorme) | 5,948,040 | Sep. 7, 1999 |

ICL NETS Contract for Birmingham Transit Info System, Intelligent Highway, Vol. 5, No. 2, May 1, 1993. (Press Release).

Claims 1-58 stand rejected under provisional obviousness-type double patenting as being unpatentable over claims 61-108 of co-pending application 10/141,935. Claims 1-57 stand rejected under 35 U.S.C. § 103 as being unpatentable over DeLorme. Claim 58 stands rejected under 35 U.S.C. § 103 as being unpatentable over DeLorme in view of Press Release.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make references to the examiner's answer (mailed Sep. 21, 2004) for the examiner's reasoning in support of the rejections, and to the appellants' brief (filed Jul. 12, 2004) and reply brief (filed Nov. 22,2004) for appellants' arguments thereagainst.

## OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Only those arguments actually made by appellants have been considered in this decision. Arguments that appellants could have made but chose not to make in the briefs have not been considered. We deem such arguments to be waived by appellants [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)]. We also note that appellants have elected to group the claims into two separate groupings. (Brief at pages 2-3.) Therefore, we will select method claims 39 and 58 as the representative claims and address appellants' arguments thereto with respect to the rejection under 35 U.S.C. § 103.

## OBVIOUS TYPE DOUBLE PATENTING

Here, we note that appellants have elected not to present argument to the obvious type double patenting rejection. Therefore, we ***pro forma*** affirm the rejection of claims 1-58 over claims 61-108 of Serial Number 10/141, 935 (noting that claims 1-60 have been cancelled and replaced by claims 61-108). Appellants indicated in the response filed Apr. 12, 2004 that a terminal disclaimer would be filed at such time when one of the two applications issues. Since appellants have not presented argument to the rejection, we will sustain the provisional obvious type-double patenting rejection of claims 1-58.

Appeal No. 2005-1663
Application No. 09/141,264

**35 U.S.C. § 103**

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a ***prima facie*** case of obviousness. **See In re Rijckaert,** 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A ***prima facie*** case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner,** 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is ***prima facie*** obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine,** 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner,** 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied,** 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against

employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362,1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the

limitations of independent claim 39. Additionally, we note that various terms used in the claims and specification are not expressly defined in the specification. Therefore, we will interpret the terms "ensure," "travel goal" and "vicinity" with their ordinary meaning.[1]

Appellants argue that DeLorme does not teach or suggest the claimed step of "determining at least one mode of transportation between the intermediate point and the destination location based upon the travel goal." (Brief at page 3.) The examiner maintains and takes official Notice that manually determining at least one mode of transportation between an intermediate point and a destination location based on a travel goal is old and well established in the field of traveling. (Answer at page 5.) The examiner further maintains that it would have been obvious to one of ordinary skill in the art to have automated this manual method. (Answer at page 5.) Appellants dispute the examiner's reliance upon the use of Official Notice and analogize that it would not have been obvious or known to a novice traveler or a traveler who has never been to the city to determine a secondary mode of transportation to arrive before the desired arrival time. (Brief at page 3-6.) Here, we find that the examiner is relying upon the knowledgeable traveler in the Official Notice and appellants are relying upon the unskilled/unknowledgeable traveler.

[1] In accordance with its ordinary meaning, we find no teaching or support for the use of the term "ensure" in the disclosed system since there is no means to determine the unknown traffic incidents prior to their occurrence. At most the system determines the most probable means to arrive at the destination prior to the desired arrival time.

After careful review of the DeLorme reference in light of the arguments of record, however, we are in general agreement with the examiner's position as stated in the Answer, but rather than decide the dispute between two varied interpretations, we shall look to the express teachings of DeLorme with which to base our decision.

From our review of the teachings of DeLorme, we find that DeLorme teaches the use of a wide range of embodiments and methodologies for the user to devise a system and methodology that best works for the individual user and goal. (DeLorme at columns 19 and 20.) We find that DeLorme allows the user to establish intermediate waypoints (or Points Of Interest) and still allows the user to arrive at the desired destination on schedule. (DeLorme at column 26, lines 29-37.) We find that the example of stopping at a restaurant as a waypoint to the airport to catch a flight teaches and/or fairly suggests the invention recited in independent claim 39.

Applying the teachings of DeLorme to the recited claim limitations we find that the system and method of DeLorme uses relational databases to process travel requests. The system receives a travel goal specifying a destination location and an appointment time for arrival at the destination location, such as the grandmother's birthday party or the destination could be the airport with a stop at a restaurant on the way. The system accesses the travel database to locate travel information corresponding to the destination location and the appointment time to determine a flight or the reservation time for the restaurant. The system determines an arrival time at an

intermediate point within a vicinity of the destination location using the located travel information that allows time for traveling between the intermediate point and the destination location to ensure arrival at the destination location by the appointment time (get to the birthday party or eat at the restaurant) determining at least one mode of transportation between the intermediate point and the destination location based upon the travel goal. Here, the system would determine you continue on in the same mode of transportation or take a flight.

Here, we note that appellants' arguments tend to imply that the mode of transportation is determined from one of a list of possible or preselected modes. We do not find such a limitation in independent claim 39, and we will not read such a limitation into independent claim 39. With respect to alternative modes of transportation, we find that DeLorme teaches the queries regarding alternative modes of transportation. (DeLorme at column 23, lines 59-63.) We further find that any one of the four menus may be used either individually or in combination with other menus to perform the travel planning. (DeLorme at column 26, lines 29-67.)

Our review of DeLorme reveals that the HOW?, WHEN?, WHERE?, and WHAT/WHO? relational databases act in concert with each other to provide travel information to a user. In a specific example provided by DeLorme, the user selected start and finish times act as a constraint on the system so that travel information, including intermediate destination information, provided to the user will fit into the

selected time frame. (DeLorme, column 26, lines 33-37, column 34, line 57 - column 35, line 8, column 36, lines 18-22, column 40, lines 47-56, column 41, lines 1-32, column 42, lines 31-45, column 44, lines 31-41, column 50, lines 28-35, and column 51, lines 23-40.) With the above discussion in mind, it is our view that the system of DeLorme, since it operates within a user selected start and finish time constraint, will determine travel information from intermediate locations which will ensure the user's arrival at a destination point by the selected arrival time as claimed.

Appellants argue that the examiner is in error with respect to the determination of a secondary mode of transportation and that it the examiner's reliance upon Official Notice was in error and has changed during prosecution. (See reply brief at pages 1-6.) With the above discussion of the express teachings of DeLorme, we find it unnecessary to reach the dispute over whether it would have been obvious to one skilled in the art of traveling at the time of the invention to have determined a secondary mode of transportation since we find that this is taught by DeLorme to the extend it is expressly claimed in independent claim 39.[2] Since we find that the teachings of DeLorme teach and fairly suggest the invention recited in independent claim 39, we will sustain the rejection thereof and claims 1-38 and 40-57 which appellants have elected to group therewith.

[2] Our finding that the limitation is taught by DeLorme would also support the examiner contention and reliance upon Official Notice. Here, we find that the examiner and appellants seem to have a disconnect as to what was actually being Officially Noticed and who the traveler is defined as with respect to the knowledge.

With respect to independent claim 58, we find independent claim 58 to expressly recite the plurality of travel options and plurality of secondary modes of transportation which we did not find recited in independent claim 39 above. Here, we find that DeLorme teaches all of the basic building blocks of the claimed invention with respect to the primary travel modes, the secondary modes, the hotels, the activities and the restaurants, but the description in DeLorme seems to require the user to put it all together working through the various menus.

While we view it fairly apparent that if the traveler is making an extended trip of a set duration, then there must inherently be a determination that an overnight stay is required somewhere, we note that independent claim 58 does not require that the system make the determination or any of the support systems perform this step. Therefore, the user may make the determination and then use the system to locate appropriate lodging. The examiner maintains that the myriad of teachings in DeLorme with respect to the limitations in claim 58 with respect to

> recommending a plurality of travel options and recommending a plurality of secondary modes of transportation based on the travel goal to ensure arrival at the destination location by the appointment time;

are taught by DeLorme in combination with the teachings in the Press Release and then these options are used in a support system to select one of each of the recommended options by

> invoking a transportation decision system to select one of the plurality of travel options and one of the secondary modes of ground transportation based on the recommended travel options and the recommended secondary ground transportation;

are taught by DeLorme in combination with the teachings in the Press Release. Here, we cannot agree with the examiner's conclusion. First, the portions of DeLorme cited by the examiner to support these two claim limitations do not expressly teach these plurality of options and selection therefrom by the system. Second, we find no convincing line of reasoning why it would have been obvious to one of ordinary skill in the art to have had the system select the options to ensure arrival at the destination by the desired time. While the parts of the claimed system seem to be present in DeLorme and a selection from a plurality of secondary travel modes in the Press Release, we cannot agree with the examiner that it would have been obvious to one of ordinary skill in the art to readily combine the above teachings to arrive at the claimed invention. Therefore, we cannot sustain the examiner rejection of independent claim 58.

Appeal No. 2005-1663
Application No. 09/141,264

**CONCLUSION**

To summarize, the decision of the examiner to reject claims 1-58 under the provisional obvious type double patenting rejection is affirmed, the decision of the examiner to reject claims 1-57 under 35 U.S.C. § 103 is affirmed, and the decision of the examiner to reject claims 58 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

JOSEPH F. RUGGIERO
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

ANITA PELLMAN GROSS
Administrative Patent Judge

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Appeal No. 2005-1663
Application No. 09/141,264

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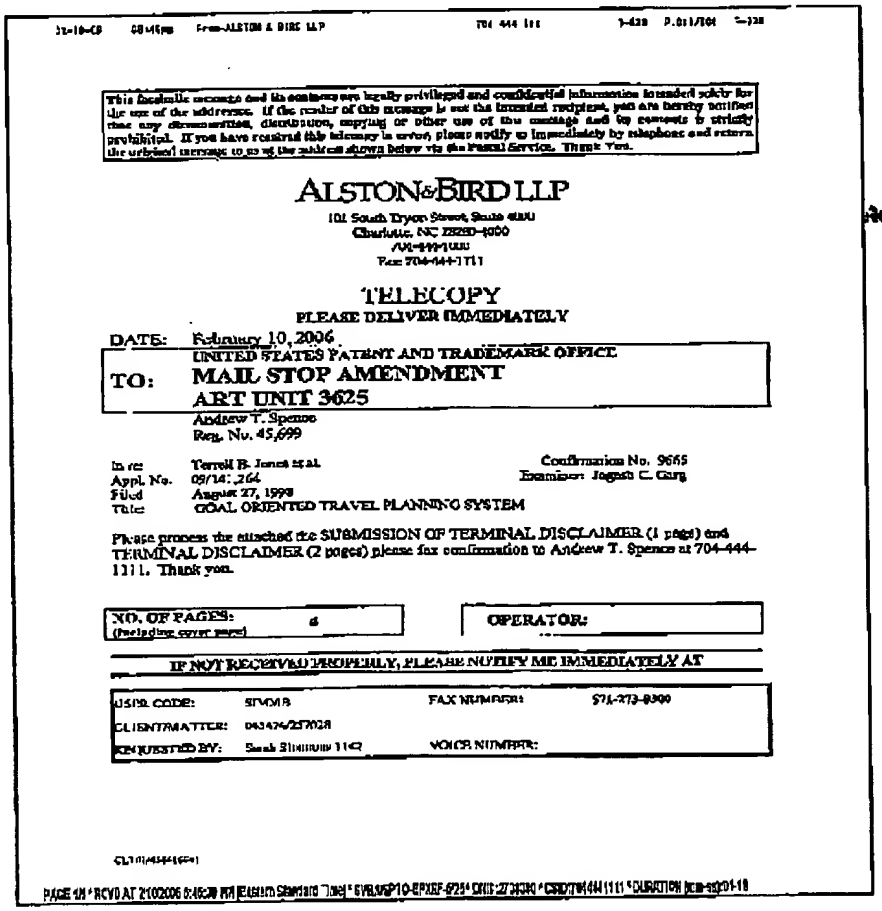

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Andrew T. Spence
Reg. No. 45,699

In re: Terrell B. Jones et al. Confirmation No. 9665
Appl. No. 09/14[illegible]264 Examiner: Jagdish C. Garg
Filed: August 27, 1998
Title: GOAL ORIENTED TRAVEL PLANNING SYSTEM

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Attorney's Docket No. 043474/257028

PATENT

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Confirmation No.: 9665
Group Art Unit: 3625
Examiner: Jogesh C. Garg

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**SUBMISSION OF TERMINAL DISCLAIMER UNDER 37 C.F.R. § 1.321(c)**

Applicant hereby submits the enclosed Terminal Disclaimer Under 37 C.F.R. § 1.321(c) for the above referenced application. The Examiner is authorized to charge Deposit Account No. 16-0605 the amount of **$130.00** for a large entity [37 C.F.R. § 1.20(d)] to cover the fee for filing a Terminal Disclaimer, and to charge any additional fee that may be required or credit any overpayment to Deposit Account No. 16-0605.

Respectfully submitted,

Andrew T. Spence
Registration No. 45,699

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Attorney's Docket No. 043474/257028

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Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

## TERMINAL DISCLAIMER UNDER 37 C.F.R. 1.321(c)

I, Andrew T. Spence, am an attorney of record of the disclaimant, TRAVELOCITY.COM LP, and am authorized to execute this disclaimer on behalf of TRAVELOCITY.COM LP. The disclaimant, TRAVELOCITY.COM LP, having a principal place of business at 3150 Sabre Drive, Southlake, Texas 76092, is the owner of all right, title, and interest in the above-identified application, by Assignment filed June 13, 2000, and recorded at Reel 010890, Frame 0792.

The disclaimant hereby disclaims the terminal part of any patent granted on the above-identified application which would extend beyond the expiration date of the full statutory term of United States Patent Application No. 10/141,935, filed May 10, 2002, entitled *Goal Oriented Travel Planning System*, which patent was assigned to the above-identified disclaimant by an Assignment recorded June 13, 2000, at Reel 010890, Frame 0792.

Disclaimant further agrees that any patent so granted on the above-identified application, which is the subject of this disclaimer, shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Application No. 10/141,935, this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors, or assigns.

Nothing herein shall be construed as a disclaimer of any terminal part of any patent granted on the above-identified application which is prior to the expiration of the full statutory term of U.S. Patent No. 10/141,935 in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(c), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

Respectfully submitted,

Date: 2/10/06

Andrew T. Spence
Registration No. 45,699

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